STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas
James E. Reeves, Special Referee

Case No. 2013-000965

SCBT, N.A., ...Respondent,

v.

Shelton Hoffman a/k/a Shelton L. Hoffman, South Carolina Department of Revenue, Baird Transport, Inc., ... Defendants.

Of whom Shelton Hoffman a/k/a Shelton L. Hoffman is the .....Appellant.

RESPONDENT'S MEMORANDUM AND REPLY TO APPELLANT'S MEMORANDUM AND OPPOSITION TO RESPONDENT'S MOTION TO DISMISS

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Respondent SCBT, N.A. ("Respondent") respectfully submits this Reply to the Appellant's Memorandum and Opposition to Respondent's Motion to Dismiss.

FACTS

The basis of Respondent's Motion to Dismiss, which was served on February 27, 2014, is that the appeal is moot because there remains no actual controversy in that the property which is the subject of the appeal has already been sold at foreclosure sale and deficiency judgment against Appellant has been waived. Sloan v. Friends of Hunley, Inc., 369 S.C. 20, 25, 630 S.E.2d 474, 477 (2006). See also Appeal of Paslay, 230 S.C. 55, 64, 94 S.E.2d 57, 61 (1958); Eastern Savings Bank, FSB v. Sanders, 373 S.C. 349, 355, 644 S.E.2d 802, 805 (Ct. App. 2007) (holding that the purpose of the law and of the proceedings in which a sale has been decreed is that it shall be final); Cumbie v. Newberry, 251 S.C. 33, 37, 159 S.E.2d 915, 917 (1968) (public policy requires that the validity of judicial sales be upheld). Appellant does not dispute that he made no attempt to file a motion to reconsider the Judgment of Foreclosure Sale, motion to set aside the foreclosure sale, motion to stay the foreclosure sale, or post a bond to stay the foreclosure sale. See S.C. Code § 18-9-170; Rule 241(b)(4), SCACR; Rule 59, SCRCP.

ARGUMENT

I. Appellant's Return is Untimely

Respondent served its Motion to Dismiss the Appeal on February 27, 2014, making the deadline to file a return March 10, 2014. Rule 262(b), SCACR; Rule 240(e), SCACR. Appellant served by mail its "Memorandum and Opposition to Respondent's Motion to Dismiss' on March 14, 2014. Appellant's failure to file the return by the

deadline may be deemed Appellant's consent the motion to dismiss. Rule 240(e), SCACR.

II. Conclusory Statements Made without Supporting Authority and Issues Not Raised in Initial Brief Are Deemed Abandoned

"South Carolina law clearly states that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review." Glasscock, Inc. v. U.S. Fidelity and Guaranty Co., 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001). In addition, arguments made in a reply brief are not considered unless originally addressed in the initial brief. Id. 348 S.C. at 81, 557 S.E.2d at 692.

a. Abandonment/Waiver of Bond Issue

The first time Appellant discusses his failure to post a bond is in his return to the motion to dismiss in which he merely states, without citing legal authority, that "[t]he Appellant did not have enough money to post a bond to stop the sale." See Appellant's Memorandum and Opposition to Respondent's Motion to Dismiss. Based upon the foregoing, Respondent submits this argument is abandoned. Id; see also Rule 241(b), SCACR (requiring strict compliance with requirements of § 18-9-170 of the South Carolina Code).

Furthermore, Appellant's final brief only requests that the judgment entered by the Special Referee be reversed and vacated, and the case be remanded for further proceedings. See Appellant's Final Brief, p. 12. Appellant abandoned all issues pertaining to the foreclosure sale by failing to raise it and/or failing to cite any legal authority to support a finding that the foreclosure sale can legally be set aside without posting a bond pursuant to Section 18-9-170 or Rule 241(b). Because Appellant did not

appeal the portion of the foreclosure judgment pertaining to the foreclosure sale, it is therefore waived and abandoned on appeal. Id; see also Rule 241(b)(4), SCACR; Parker v. Shecut, 349 S.C. 226, 231, 562 S.E.2d 620 (2002).

III. Void versus Voidable Sales

In Appellant's Memorandum and Opposition to Respondents Motion to Dismiss, Appellant, for the first time, argues that the appeal is not moot because if the case is remanded, a court could find that the sale is voidable since Respondent was the successful bidder at the foreclosure sale. Even if this issue was not abandoned by his failure to raise the issue in his initial brief, Appellant's argument fails.

Appellant cites two South Carolina cases in support of his argument that the sale of the property could be voided by the Court. See Appellant's Memorandum and Opposition to Respondents Motion to Dismiss, p. 2. Appellant's reliance upon Leconte and Eason is curious, considering they stand for the proposition that property acquired by a bona fide purchaser at a judicial sale will not be voided even if the underlying judgment is later reversed. See Leconte v. Irwin, 19 S.C. 554, 558 (1883); Eason v. Witcofskey, 29 S.C. 239, 244, 7 S.E.2d 291, 293 (1888). Moreover, the bulk of the analysis in these opinions is devoted to issues involving notice and other related matters entirely irrelevant to instant appeal. Id. As such, even if these issues are preserved for review, which Respondent disputes, Appellant's contention that Leconte and Eason provide a basis to void the sale should be rejected as meritless.

Respondent further notes that Leconte and Eason were issued well before the promulgation of Rule 241(b), SCACR, and S.C. Code § 18-9-170, which, when taken together, provide that the general rule that appeal stays matters decided in judgments does

not apply to judgments directing the sale or delivery of possession of real property. See Rule 241(b), SCACR; S.C. CODE ANN. § 18-9-170 (2013). Thus, to the extent Leconte and Eason are inconsistent with the Rule 241, SCACR and § 18-9-170, they should be disregarded in the instant matter.

Appellant also cites opinions from other jurisdictions as evidence that "courts have addressed when a judgment is to be deemed voidable, as opposed to void." See Appellant's Memorandum and Opposition to Respondents Motion to Dismiss, p. 2. Regardless of their applicability to the instant matter, Appellant's reliance on these opinions is misplaced. City Bank v. Saje Ventures , II, Leisure Campground & Country Club Ltd. Partnership v. Leisure Estates and Citybank, N.A. v. Data Lease Financial Corp. all provide exceptions to the general rule espoused by Leconte and Eason, supra. See City Bank v. Saje Ventures , II, 7 Haw. 130, 133, 748 P.2d 812, 814 (Ct. App. Haw. 1988), Leisure Campground & Country Club Ltd. Partnership v. Leisure Estates, 280 Md. 220, 223, 372 A.2d 595, 598 (Ct. App. Md. 1977), Citybank, N.A. v. Data Lease Financial Corp., 645 F.2d 333 at 336 (5th Cir., 1981). Presumably, Appellant relies on the forgoing opinions in an attempt to persuade the Court that the sale that lies at the heart of this appeal is voidable and thus can be overturned. However, an examination of the procedural history of this case reveals Appellant cannot maintain this argument. Primarily, as discussed above, Hoffman never attempted to set aside or stay the sale of the subject property or post bond, and actually participated in the bidding process. See Respondent's Motion to Dismiss, p. 6; see also South Carolina Nat'l Bank v. Blossom, 321 S.C. 110, 113, 467 S.E.2d 767, 769 (Ct. App. 1996) (discussing S.C. CODE § 18-9-170 requiring the posting of a bond in order to stay an order directing the sale of

property); Rule 241(b), SCACR; S.C. CODE ANN. § 18-9-170 (2013). Secondly, Appellant never filed a Rule 52(b) or 59(e) motion to reconsider the Judgment of Foreclosure or the Order Confirming Sale in the underlying matter. See Rule 52(b), SCRCP; Rule 59(e), SCRCP. In light of the foregoing, even if the rules promulgated by these extra-jurisdictional courts apply to the facts at hand, which Respondent disputes, Appellant's argument fails because the sale is final. See Blossom, supra; see also I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724, (2000) (holding that if a losing party raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review).

CONCLUSION

For the reasons stated above, Respondent's Motion to Dismiss must be granted.

Respectfully submitted,

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March 18, 2014

STATE OF SOUTH CAROLINA
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Shelton Hoffman a/k/a Shelton L. Hoffman, South Carolina Department of Revenue, Baird Transport, Inc., ... Defendants.

Of whom Shelton Hoffman a/k/a Shelton L. Hoffman is the ..... Appellant.

CERTIFICATE OF SERVICE

I, Joanne J. Gagnon, a paralegal with the Law Firm of Rogers Townsend & Thomas, PC, do hereby certify that I have cause to serve a copy of the foregoing document(s) upon the below named individuals and/or opposing counsel by U.S. Mail, postage prepaid, on March 18, 2014 at the following address(es):

- ***Respondent's Memorandum and Reply to Appellant's Memorandum and Opposition to Respondent's Motion to Dismiss***

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March 18, 2014

The Honorable Jenny Abbott Kitching
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: SCBT, N.A. v. Shelton Hoffman et al;
Appellate Case No. 2013-000965
Our File No. 016555-00090

Dear Ms. Kitching:

Please find enclosed the original and six (6) copies of the Respondent's Memorandum and Reply to Appellant's Memorandum and Opposition to Respondent's Motion to Dismiss. Please file the original documents and return a clocked copy in the enclosed self-addressed, stamped envelope.

If you should need anything further, please do not hesitate to contact me.

With kind personal regards, I am

Yours very truly,

James K. Cluverius, Jr.

JKC/jjg
Enclosures
cc: Mark W. Hardee, Esquire (w/enclosure)

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SC Court of Appeals

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